

A.E. WALKER, SUPERINTENDENT OF BANKS,

VERSUS

JOHN H. LANGHAM, ET AL.

IN THE CIRCUIT COURT

OF BALDWIN COUNTY, ALA.

INTERROGATORIES PROPOUNDED BY THE DEFENDANTS TO THE PLAINTIFF IN THE ABOVE ENTITLED CAUSE.

1.- Are you not the plaintiff in this cause, and Superintendent of Banks for Alabama? How long have you held this position? Are you acquainted with William Powell of or formerly of Bay Minette, Alabama who, in September 1914, was acting as president and manager of the Bank of Bay Minette?

2.-/ During that time, and in what capacity, was the said Powell connected with said bank, and what influence did he exercise in the control of same? Was he or not the active and controlling spirit in the organization of the bank, and since its organization, up to the time you took charge, did he not practically dominate and control the officers and directors of the bank, and was he or not the dominating and controlling influence in the bank? If you say that he was not, or that you have no knowledge on the subject, please state whether or not you did not swear to this in practically the same manner as stated above, in your affidavit before C.H. Lapsley on January 2nd., 1915 which you filed in the Chancery Court in Mobile in the case of The Bank of Bay Minette, et al. versus Baldwin County Bank? Is it not a fact that the directors of the Bank of Bay Minette were men wholly lacking in experience in the banking business; that they were widely scattered, and gave but little of their time and attention to the affairs of the bank, and permitted C.S. Woodson and William Powell to run the affairs of the bank for their own purposes and profit, and by proper attention to their duties, as directors, they might have easily discovered the fact that the Bank of Bay Minette was fast being driven on the rocks or financial disaster by Powell and Woodson? If you answer this in the negative, or say that you are not informed as to this, state whether or not you did not swear to it in the affidavit above mentioned?

In the suit in which you filed the affidavit referred to, did you not also file, or cause to be filed, or see, the affidavit of Robert E. Catrett, one of the directors of the Bank of Bay Minette in which he swore that the said William Powell had dominated and controlled the policy and business of the Bank of Bay Minette? Was not such statement of Catrett true?

3.- What connection did William Powell have with the procuring of the note sued on in this action? Did he or not, representing the Bank of Bay Minette, go with one Thompson to procure the endorsements on said notes? What representations, if any, did he or the said Thompson make to the defendants in this action to procure such endorsements? After such endorsements were procured, who held possession of the notes until they were turned over to the Bank of Bay Minette, and who delivered them to said Bank?

4.- At the time such notes were delivered to the Bank of Bay Minette, was or not said Thompson indebted to the bank, and if so, in what sum? Were these notes used in payment, or partly in payment of Thompson's indebtedness to the bank? What consideration did Thompson receive from the bank for these notes? Was any money paid to him by the bank as proceeds or part of the proceeds of these notes; if so, when and in what amounts? Was or not the Bank notified by the endorsers or some of them, or their attorney, not to discount such notes? Was not this done before they were discounted?

*James I. Stone*  
*Webb M. Reese & Grove*  
ATTORNEYS DEFENDANTS.

STATE OF ALABAMA, )  
COUNTY OF MOBILE. )

Before me, L.C. Harris, a Notary Public in and  
for said State and County, personally appeared  
James H. Webb, who, upon oath, deposes and says that he is one of  
the attorneys for the defendants in the above entitled cause, and  
that the answers of the plaintiff to the above and foregoing in-  
terrogatories, if well and truthfully made, will be material  
evidence for the defendants in said cause.

Sworn to and subscribed before me, this, the 17th.  
day of April, 1917.

L. C. Harris.  
Notary Public, Mobile County, Alabama.

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JUN 12 1924

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1923-24.

1 Div. 315.

John Langham, et als.,

v.

A. E. Jackson, Superintendent of Banks.

Appeal from Baldwin Circuit Court.

THOMAS, J.

The court gave the general affirmative charge at the request of the plaintiff. The instant assignments of error relate to the action of the court in refusing to allow in evidence testimony as to the acts, conduct and declarations of William B. Powell relating to the taking by the Bank of Bay Minette of the note of defendants and one C. B. Thompson. The suit is by the Superintendent of Banks on the endorsement by defendants of the note to said bank by said Thompson.

The real defense by the endorsers is that the endorsements were conditional - that the note would be also endorsed by W. D. Owens, Jr., and that it was not so endorsed before it was taken and used by the bank with knowledge of the character of defendants' respective conditional endorsements.

The question of agency and how the same may be shown, where that fact rests in parol, has been the subject of frequent discussion by the courts. When the fact of agency rests in parol or is to be inferred from the conduct of the principal, and there is evidence tending to show agency, the acts and declarations of the alleged agent become admissible to enable the jury to determine whether or not there was agency.- Roberts & Sons v. Williams, 198 Ala. 290; Lytle & Co. v. Bank of Dothan, 121 Ala. 215; Gambill v. Fuqua, 148 Ala. 448; Reynolds v. Collins, 78 Ala. 94; Martin v. Brown, 75 Ala. 442; Simon v. Terrell, 38 Ala. 208; Buist v. Guice, 96 Ala. 255; 2 C. J., p. 945 et seq.; 38 Cyc. 2079.

It is further declared by this court that where it is shown that the actor has been held out by the principal as being his agent, or as possessing the authority assumed by such agent within the scope of the principal's business, the rule of apparent authority can be invoked by one who has been misled thereby to his detriment.- Pacific Mut. Life Ins. Co. v. Hayes, 202 Ala. 450, 453; Roberts & Sons v. Williams, supra; Fulton v. Sward Med. Co., 145 Ala. 331, 334; Patterson v. Neal, 135 Ala. 477, 482; Robinson & Co. v. Greene, 148 Ala. 434; Syndicate Ins. Co. v. Catchings, 104 Ala. 176; 1 Am. & Eng. Encyc. of Law (2nd Ed.), p. 990. A principal who would avail himself of a contract made by another for him, whether by an appointment or as a gratuitous agent, is bound by the representations made and methods and means employed by such agent to effectuate the contract.- Pacific Mut. Life Ins. Co. v. Hayes, supra; Roberts & Sons v. Williams, 198 Ala. 290, 292; Capital Security Co. v. Owen, 196 Ala. 385, 387; Doran & Co. v. Gilreath, Id. 377; Williamson v. Tyson, 105 Ala. 644.

There was error in excluding the evidence sought to be evoked by the questions sought to be propounded to Mr. Woodson, and on which assignments of error from one to five, inclusive, are based. The agency and interest of Mr. Powell in the premises were subject of a proper cross-examination, and this was denied.

The questions sought to be propounded to Mr. Woodson were:

"Now, before he brought these notes back to you,

phone call from one of the defendants, telling you about the circumstances under which these endorsements were obtained and telling you not to discount these notes?"

"Didn't Mr. Briars there call you up on Tuesday morning before these notes were delivered to you, and explain to you the circumstances under which these endorsements had been gotten, and tell you for the bank not to take these notes?"

"Now before he took - he went out with these notes to get these endorsements, did he not say to you that you and Catrett should not have loaned Thompson that \$2000 and more, that you had loaned him without security, and that if the bank examiner came down and found that out, that it would cause trouble, and did you and he not agree then, that he should go and endeavor to get a note with endorsements, in order to protect the bank on this loan that was made to Thompson without security?"

These questions called for competent evidence tending to show notice to the bank and the circumstances entering into the securing of the endorsements. No opinion of the witness was called for - merely the facts entering into or concomitant with the endorsements and the res gestae thereof.

The fact of Powell's interest in the bank and his participation in the conduct of its affairs, as making or approving loans, at or about the time of the making of the Thompson loan or renewal thereof, with the endorsements, should have been given the jury, so that they might consider the bona fides of the defense of conditional endorsement secured by Powell.

The witness Langham, and the other defendants as witnesses, should have been permitted to answer the question, "Just state what occurred at the time that the notes were endorsed", as calling for the res gestae of that act. So, also, of the question, "What, if anything, did the man Powell say to you on that occasion before you endorsed the note in regard to endorsing it?"

The facts and circumstances becoming a part of or entering into and inducing the endorsements of the note by the re-

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spective defendants, were relevant under the defense pleaded.

The judgment of the circuit court is reversed and the cause remanded.

Reversed and remanded.

Anderson, C. J. Somerville and Bouldin, JJ., concur.